IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6913 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUSABHAI HASAMBHAI SANDHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. A.J. Desai, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. S.G. Patel for the petitioner and learned A.G.P. Mr. A.J.Desai for the respondents nos.1, 2 and 3.

1. The detention order dated 15-4-1999 passed by the respondent no.2-Commissioner of Police,Rajkot against the petitioner in exercise of powers conferred under Section

3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA" , copy of which is produced at Annexure "B"inter alia indicate that two Prohibition Cases bearing CRs. nos.9/99 and 7/99 were registered at Rajkot City Malavianagar Police Station and Rajkot Taluka Police Station respectivelyon 17-1-1999. That Indian made foreign liquor was seized from the possession of the petitioner in both the cases which are pending in Court.

3. That over and above the material of above stated cases, two witnesses on assurance of anonymity have supplied information against the petitioner and his bootelegging activity vide their statement dated 6-4-1999 and 6-4-1999 respectively wherein the witnesses have related the alleged incidents dated 3-1-1999 and 13-12-1998 respectively.

4. That in consideration of the above stated material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a " bootlegger" within the meaning of Section 2(b) of PASA". That resort to enforcement of general law not being sufficient to prevent the petitioner from continuing his antisocial activity, it is necessary to pass the detention order under "PASA" and hence, the impugned order is passed.

5. The petitioner has challenged the impugned order on numerous grounds. The impugned order is assailed on behalf of the petitioner by making a submission at the Bar that though the prohibition cases against the petitioner were registered on 17-1-1999, the impugned action of passing the detention order has been taken on 15-4-1999. That said delay in taking action has not been explained, and as such, the order is rendered invalid on account of unexplained delay.

6. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656), the Supreme Court has held that unexplained delay of five months and six days in passing the detention order from the date of registered offence which is the base for passing the order, the order is rendered invalid on account of the live link between the alleged activity and the impugned action taken having been snapped.

6.1 That this Court in the case of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381 has also expressed the aforesaid view that where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken is snapped, the detention order passed on the basis of registered case is invalid..

7. In the instant case, the detaining authority has observed in the grounds of detention that the petitioner detenu was released on bail in registered prohibition cases against the petitioner, however, having got himself released on bail the petitioner has continued his antisocial activity, and as such, the impugned order is passed. That the said fact does not provide any explanation, much less, a reasonable explanation to explain the delay in passing the order on 15-4-1999 after the alleged antisocial activity of the petitioner having come to light since 17-1-1999.

8. Learned A.G.P. Mr. A.J. Desai has attempted to salvage the issue by stating on instructions after reference to the original file that though the offence was registered against the petitioner on 17-1-1999, the petitioner could be arrested in February, 1999 only. The said fact still does not explain as to what prevented the detaining authority from taking prompt action. That the live link between the alleged activity which had come to the knowledge of the Sponsoring Authority on 17-1-1999 was snapped on account of lapse of time, and thereby, unexplained delay in taking impugned action is proved to be fatal to the validity of the detention order.

9. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

10. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 15-4-1999 passed by the Commissioner of Police, Rajkot (respondent no.2) is hereby quashed and set aside. The petitioner-detenu-Musabhai Hasambhai Sandhi is ordered to be set at liberty forthwith, if not required in any othern case. Rule to that extent is made absolute.

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